

ARGUMENTS

I. The Examiner rejected claims 1-42 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,221,403 B1 (Nesbit) in view of U.S. Patent No. 6,287,583 B1 (Warren).

In citing this rejection, the Examiner relies upon the language of column 1, lines 13-20 of the Nesbit reference to provide a motivation to combine the Warren and Nesbit references. The cited language of the Nesbit reference reads as follows:

“As these known pastes cannot be properly sterilised it is conventional to include “preservatives” which include antibacterial and antiviral agents, such as alkyl p-hydroxybenzoates, in order to irradiate any bacteria or viruses that were not removed by sterilisation.”

Further, the Examiner utilizes the extensive list of “examples of antimicrobial agents” (Warren; column 4, line 39) to provide a citation mentioning cedar leaf oil.

In short, the Warren reference lists well over one hundred (100) examples of antimicrobial agents. Thus, the Examiner argues that it would be obvious for one of ordinary skill in the art to add any one of the examples and, in particular, cedar leaf oil, cited as examples by Warren, to the teaching of the Nesbit reference for the purpose of eradicating any bacteria or viruses that were not removed by sterilization.

Applicant respectfully argues that the claims of applicant's invention are not obvious in light of the references cited by the Examiner and respectfully offers the following in support.

1. Applicant respectfully argues that the Examiner is applying an improper "obvious to try" rationale in support of the obviousness rejection as defined by MPEP § 2145.

Specifically, the Examiner has provided a first reference (Nesbit) containing a general suggestion that preservatives may be used to sterilize known pastes and a second reference (Warren) containing over 100 examples that could be used as an antimicrobial agent.

Applicant respectfully argues that the Examiner, through the cited references, has suggested that one of ordinary skill in the art would read Nesbit and then try each of numerous possible choices, as listed by Warren, having some kind of anticicrobial properties until he or she arrived at a successful result.

Applicant respectfully submits that the prior art cited by the Examiner gives no indication that the use of cedar leaf oil is critical and, further, gives no direction as to which of the numerous options provided by Warren is likely to be successful. As a result, applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-42 under § 103(a).

2. The Warren reference teaches away from the use of cedar leaf oil in light of the claimed ranges of the present invention.

Applicant respectfully argues that the Warren reference teaches away from the claimed invention, as defined by MPEP § 2145, which states that a prior art reference “teaching away” from the invention as claimed is a significant factor to be considered in determining obviousness.

Applicant respectfully directs the Examiner’s attention to column 4, lines 30-35. In this paragraph, Warren describes four (4) specific ranges in which the amount, by weight, of the antimicrobial agent would fall. These, in order, are: .001% to 5%, .01% to 2%, .05% to 1.5% and .1% to 1.0% being preferred.

Applicant respectfully argues that this portion of the Warren reference would lead a reader of ordinary skill in the art to believe that a decrease in the amount of antimicrobial agent from 5% to 1% would be preferred. This argument is supported by the language of the Warren reference which clearly indicates that lesser amounts of antimicrobial agent are preferred (see “preferably,” “most preferably,” and “more preferably” language utilized as the % of antimicrobial agent is decreased).

Further, applicant respectfully submits that the following sentence of column 4, lines 35-37, i.e., “the exact amount of antibacterial active to be used in the compositions will depend on the particular active utilized since actives vary in potency,” refers to the exact amount within the described ranges, i.e., between 1% and 5%, and teaches away from the use of these agents in amounts greater than about 5%. In light of the above, applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-42 under § 103(a).

II. The Examiner rejected claims 1-42 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,869,062 (Oliver) in view of Warren. Applicant respectfully repeats the above arguments, as they pertain to the Warren reference, and respectfully offers the following with regard to the combination of Oliver in view of Warren.

1. As with Nesbit above, applicant respectfully submits that the Oliver reference teaches away from the claimed invention. Applicant respectfully directs the Examiner's attention to column 2, lines 29-38, of the Oliver reference. In short, the Oliver reference states that a naturally occurring antibacterial product in an amount between about .25% and about 4% by weight is utilized (see column 2, line 31). Further, the Oliver reference states that between 1% to 3% of tea tree oil is utilized (see column 2, line 39). Even if the Examiner's argument that tea tree oil and cedar leaf oil are equivalent is assumed to be correct, the Oliver reference clearly teaches away from use of more than 4% by weight. As stated above, the broadest claims of the present invention specify greater than about 6% of cedar leaf oil by weight.

In addition to the above, applicant respectfully disagrees with the Examiner's argument that tea tree oil and cedar leaf oil are equivalent. Applicant respectfully offers that just because two agents have antibacterial properties does not make them equivalent.

Specifically, the Examiner has argued that the motivation to combine Oliver and Warren is based on the teaching of equivalence between tea tree oil and cedar leaf oil by Warren. Applicant respectfully argues that Warren merely presents tea tree oil and cedar leaf oil as examples of natural

substances having antibacterial agents and does not suggest or otherwise disclose any evidence or suggestion of equivalence.

To provide further evidence relating to this argument, applicant offers the attached declaration of J. Ronald Wilk addressing the Examiner's equivalence argument.

III. In addition to the above, applicant respectfully submits that the claimed invention produces unexpected results over the prior art. The overall combination of the components of the claimed invention produces as unexpected, synergistic result and satisfies a persistent, long-felt need not satisfied by others.

To support this assertion, applicant has attached:

1. A declaration under 37 CFR 1.132, signed by one of exceptional skill in the art, Dr. J. Ronald Wilk.
2. Objective visual evidence illustrating actual testing results of the claimed invention, attached as Exhibits "A", "B" and "C".

In light of the above arguments and objective evidence, applicant respectfully requests that the Examiner reconsider and withdraw the rejections under § 103(a).

Applicant amended the claims to clarify the structure which applicant believes distinguishes the invention over the cited references, to clarify the functions of the claimed invention, and to clarify the limitations within the claims drawn to such structure. However, amendments have not been made to narrow the claims of the original application but, rather simple, to clarify claims due to grammar that the Examiner found unclear.

Applicant respectfully requests that this amendment/response be considered by the Examiner and a notice of allowance be entered.

If the Examiner feels that a telephone conference with the undersigned would be helpful to the allowance of this application, a telephone conference is respectfully requested.

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as First Class Mail (37 CFR 1.8(a)), in an envelope addressed to Box Response, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Date: 11-12-02


Bianca Grossweiler



VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

1. (Amended) A solution for the topical treatment of skin sores comprising:
cedar leaf oil comprising from about [5%] 6% to about 10% by weight;
zinc oxide ointment comprising from about 5% to about 10% by weight;
calamine lotion comprising from about 2% to about 10% by weight; and
an ointment base.

16. (Amended) A method of preparing a solution for treating skin sores comprising the
step of:
combining cedar leaf oil, zinc oxide ointment, and calamine lotion with an ointment base
to form a treatment ointment; said cedar leaf oil comprising between about 6% and about 10% by
weight of said solution.

31. (Amended) A method of treating skin sores comprising the step of:
applying a treatment solution to the skin sore, wherein the treatment solution comprises
cedar leaf oil, zinc oxide ointment, calamine lotion and an ointment base; said cedar leaf oil
comprising between about 6% and about 10% by weight of said solution.